

*Comments of the PACE Coalition, et al.*  
October 4, 2004

## **EXHIBIT 12**

Page 1 of 1  
Filed in Indiana Docket 42500 as Exhibit JPG 2.3  
Mass Market Share of Claimed Triggers and UNE-P by CCLI in Indianapolis MSA

CCLI	Trigger A	Trigger B	Trigger C	Trigger D	Trigger E	UNE-P
IPLSIN01	0.1%	0.2%	0.4%	0.0%	0.0%	4.3%
GNWDIN01		0.3%	0.9%	0.0%		11.0%
FSHRIN01	0.2%	0.2%	1.1%	0.1%	0.0%	9.1%
CRMLIN01	0.3%	0.3%	0.9%	0.1%	0.0%	9.3%
IPLSIN07	0.2%	0.3%	0.8%	0.1%		15.3%
IPLSIN09		0.3%	1.1%	0.0%		13.5%
IPLSIN04		0.3%	1.5%	0.1%		11.0%
IPLSIN08	0.2%	0.3%	0.7%	0.0%		12.9%
IPLSIN10		0.4%	0.7%			19.3%
IPLSIN03		0.3%	0.9%	0.0%		16.6%
IPLSIN02		0.4%	1.0%	0.1%		18.3%
IPLSIN06		0.4%	1.0%	0.0%		16.3%
IPLSIN21	0.2%		0.9%	0.2%		8.3%
NBVLIN01		0.2%	0.6%			12.1%
IPLSIN18			0.7%			13.6%
PLFDIN01		0.7%				12.5%
BRBGIN01						12.1%
OKLININ01						15.3%
SHVLIN01		0.5%				15.3%
MRVIIN01						15.7%
GNFDIN01						14.1%
MTVIIN01		0.5%				19.5%
ZIVLIN01						9.5%
LBNNIN01						13.0%
WNTNIN01						17.5%
DAVLIN01						11.0%
ACTNIN01						13.2%
NSVLIN01						n/a
NWPLIN01						10.8%
SHRDIN01						17.0%
FSHRIN03						n/a
FRLDIN01						13.7%
EDBGIN01						41.8%
CRMLIN02						n/a
MGTWIN01						28.3%
FSHRIN02						n/a
FSHRIN04						n/a
IPLSIN80						n/a
MCBBIN01						14.2%
PRGNIN01						30.3%
CRMLINAD						n/a
FLRKIN01						11.6%
IPLSINMN						n/a
FSHRINAD						n/a
GNWDIN03						n/a
FSHRINFC						n/a
IPLSIN74						n/a
<b>Total</b>	<b>0.1%</b>	<b>0.2%</b>	<b>0.6%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>11.5%</b>

n/a: Data provided by SBC does not permit access lines to be matched with every wire center.

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## **EXHIBIT 13**

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>On Its Own Motion</b>	)	
	)	
<b>Implementation of the Federal Communications</b>	)	<b>Docket No. 03-0595</b>
<b>Commission's Triennial Review Order with respect to</b>	)	
<b>Potential Non-Impairment Determinations Regarding</b>	)	
<b>Unbundled Local Switching for Mass Market Customers</b>	)	
<b><u>in Specific Markets</u></b>	)	

**REBUTTAL TESTIMONY AND EXHIBITS OF**  
**JOSEPH GILLAN**  
**ON BEHALF OF**  
**AT&T COMMUNICATIONS OF ILLINOIS, INC.,**  
**TCG CHICAGO, TCG ILLINOIS,**  
**ACCESS ONE, INC.,**  
**BULLSEYE TELECOM,**  
**CIMCO COMMUNICATIONS, INC.,**  
**FORTE COMMUNICATIONS, INC.,**  
**AND**  
**GLOBALCOM, INC.**  
**("THE CLEC COALITION")**

**CLEC Coalition Exhibit JPG 2.0**

**February 24, 2004**

ICC Docket No. 03-0595  
CLEC Coalition Exhibit JPG 2.0 (Gillan)

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We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching. In particular, only about three to five percent of CMRS subscribers use their service as a replacement for primary fixed voice wireline service, which indicates that wireless switches do not yet act broadly as an intermodal replacement for traditional wireline circuit switches.<sup>15</sup>

In their filings at the federal level, the ILECs attempted to use low levels of competitive activity as marketplace evidence of non-impairment, but the FCC rejected those attempts and made a national finding of impairment. Obviously, it would be anomalous for the FCC to delegate to the states a trigger analysis that, when applied to data showing the same de minimis levels of competitive activity reviewed and rejected by the FCC, produces findings that are directly inconsistent with and would reverse the FCC's national finding of impairment.

**Q. Are the levels of mass market activity relied upon by Staff any different than those already rejected by the FCC?**

**A.** No. As I indicated in my direct testimony, SBC Illinois' trigger case rests upon the activity of nine carriers,<sup>16</sup> none of whom has more than a 0% market share (rounded to the nearest percent), and who collectively serve only 1% of the

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<sup>15</sup> TRO ¶ 445, footnotes omitted, emphasis added.

<sup>16</sup> SBC Illinois' testimony also includes two intermodal providers, RCN and Comcast. I respond to Staff's treatment of these carriers later in my rebuttal.

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CLEC Coalition Exhibit JPG 2.0 (Gillan)

1        market, to argue that the Commission should eliminate UNE-P in nearly 70% of  
2        Illinois.<sup>17</sup> To this list, Staff is evidently suggesting that Winstar should also be  
3        considered a self-provisioning switch trigger, even though there is no evidence  
4        that Winstar serves any mass market lines in the state.<sup>18</sup> These trivial levels of  
5        activity, however, have already been rejected by the FCC as evidence of non-  
6        impairment. Consequently, Staff's analysis violates the basic principle that states  
7        should "implement their delegated authority in the same carefully targeted manner  
8        as our [i.e., the FCC's] federal determinations."<sup>19</sup>

9  
10       **Q.    Are there other areas where the Staff analysis misreads the TRO?**

11  
12       **A.    Yes.** For instance, Staff rejects the discussion in my direct testimony that the  
13       TRO prohibits states from counting enterprise switches in the mass market trigger  
14       analysis.<sup>20</sup> Specifically, Staff takes the position that if an enterprise switch serves  
15       *any* mass market lines, then the switch should be counted as a mass market  
16       switch. Staff bases this conclusion on the following passage in the TRO

17  
18                    Although switches serving the enterprise market do not qualify for  
19                    the triggers described above, we believe that, after implementation  
20                    of a batch cut process, switches being used to serve the enterprise

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<sup>17</sup>       Staff Exhibit 1.0, page 112.

<sup>18</sup>       Staff indicates that its sponsorship of Winstar is "tentative." Staff Exhibit 1.0, page 66.

<sup>19</sup>       TRO ¶ 189.

<sup>20</sup>       Staff Exhibit 1.0, page 55.

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1 market are likely to be employed to serve the mass market as well,  
2 and that the state commission should investigate the feasibility of  
3 this.<sup>21</sup>  
4

5 This passage, however, relates to a “potential deployment” analysis that is not  
6 being undertaken here<sup>22</sup> and, as the FCC stated, it is an observation relevant only  
7 after implementation of a batch hot cut process (if then). Moreover, Staff’s  
8 *interpretation* of this passage is as follows:  
9

10 As this passage indicates the FCC was specifically referring to  
11 switches that do serve enterprise markets but do not serve the mass  
12 market when it stated that enterprise switches serving the  
13 enterprise market do not qualify for the triggers. In no way does  
14 this imply, as Mr. Gillan indicates, that switches used to serve  
15 mass market customers should be excluded from the trigger  
16 analysis when they also happen to be used to serve enterprise  
17 customers.<sup>23</sup>  
18

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<sup>21</sup> TRO ¶ 508, cited by Staff at page 56.

<sup>22</sup> Staff understands that it has confused elements of the “potential deployment” analysis with the “trigger analysis” underway here, but seems unconcerned because of its prejudgment as to the result (Staff Exhibit 1.0, page 57):

Mr. Gillan’s identification of CLECs providing both enterprise service and mass market service with their switches provides the Commission with significant evidence regarding the feasibility of potential deployment of mass market switching in the Chicago MSA. Thus, although no party at this time recommends that the Commission perform a potential deployment analysis, the evidence Mr. Gillan presents would, based on the FCC’s rules, weigh in favor of a finding of no impairment if the Commission were to perform such an analysis.

This statement provides additional evidence that it misreads the TRO. The fact that the States should consider whether enterprise switches could serve the mass market without impairment is a legitimate issue for a potential deployment phase, but that does not mean the Commission (or its Staff) should *assume* that to be the case here.

<sup>23</sup> Staff Exhibit 1.0, page 55.

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1 Staff is correct that nothing in this passage indicates that the states should not  
2 count switches that “also happen to be used to serve enterprise customers.”<sup>24</sup> But  
3 this is not the passage cited by my testimony and that is not the point that I made.  
4 What my testimony explained – and what the TRO makes clear – is that switches  
5 do not become “mass market switches” just because they happen to serve some  
6 minimal number of mass market lines. The FCC fully understood that enterprise  
7 switches (which, at least, Staff acknowledges are not to be counted) would serve  
8 some mass market lines. Specifically, the FCC explained:

9  
10 Incumbent LECs claim that the Commission should remove  
11 virtually all unbundling obligations regarding local switching on a  
12 national basis simply because competitive carriers have deployed  
13 1,300 switches and are serving, according to the BOC UNE Fact  
14 Report 2002, over 16 million lines with those switches. This  
15 argument, however, ignores significant differences in the evidence  
16 concerning the enterprise market and mass market. The record is  
17 replete with evidence showing that competitive LECs are  
18 successfully using their own switches to serve large business  
19 customers that require high-capacity loops (which can be  
20 connected to competitive carrier switches with few of the obstacles  
21 that affect voice-grade loops). For example, BiznessOnline.Com  
22 cites data compiled by a coalition of competitive carriers which  
23 examined six representative markets and found that approximately  
24 90 percent of the loops used by competitive carriers in these  
25 markets are DS1 capacity or higher loops.<sup>25</sup>  
26

27 As the above passage makes clear, the FCC understood that enterprise switches  
28 would have some analog activity, and provided guidance as to the levels of analog

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<sup>24</sup> Although not directly relevant to the point I am making here, there is also nothing in the passage that supports the Staff’s interpretation that the FCC was referring to switches that served only enterprise lines.

<sup>25</sup> TRO ¶ 437, emphasis added.



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1 activity that should be expected without changing their conclusion that the  
2 existence of such switching did not demonstrate non-impairment. The FCC  
3 specifically cited enterprise carriers using their switches to serve (on average)  
4 10% analog lines,<sup>26</sup> yet that did not change the FCC's view that these carriers  
5 were engaged in serving large businesses and were *not* evidence of non-  
6 impairment. The Staff's analysis not only rejects this analytical fact, it reaches  
7 the exact opposite result.

8  
9 I also note that Staff's characterization that my testimony called for the  
10 Commission to exclude switches that "also happen to be used to serve enterprise  
11 customers" totally misstates the analysis that I recommended. The companies  
12 analyzed do not just "happen" to serve enterprise customers; serving the  
13 enterprise market is their strategic focus, and the analog loops served by those  
14 switches either incidental to their enterprise business (and thus not evidence that  
15 the carrier has generally surmounted the barriers to entry in the mass market), or a  
16 legacy remnant of an abandoned, i.e. failed, business plan.<sup>27</sup>

17  
18 **Q. Is the shift from an analog-to-digital focus evident in SBC's UNE-L data?**  
19

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<sup>26</sup> As my direct testimony explained, the actual study (attached to my direct testimony as Exhibit JPG 1.3) showed the *range* of analog activity as being 80% to 90%.

<sup>27</sup> In this respect, MPower is the "poster child" for the fallacy of Staff's approach. While Staff recommends that MPower be counted as a self-provisioning switch trigger, its Web-site makes clear it has retooled its business plan to focus on the digital market (see Gillan Direct, page 83).

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1       A.     Yes. Staff's testimony is completely at odds with not only the TRO, but with the  
2             most basic trends in the market. Table 1 (below) demonstrates that UNE-L based  
3             competition is fundamentally focused on the enterprise market, while mass  
4             market UNE-L activity is in rapid decline:  
5

Table 1: UNE-L Activity in Illinois (SBC Territory) by Type <sup>28</sup>				
Type	UNE-L Lines in Service (VGE)		Change	Percent
	March-03	December-03		
Analog (Mass Market)	291,796	275,199	-16,597	-6%
Digital (Enterprise)	149,304	222,648	73,344	49%

6  
7             Moreover, the above trends are not isolated instances; the data indicates a  
8             systematic adjustment across the entire market. Analog loop activity is in *broad*  
9             decline over 80% of the wire centers, while enterprise activity is on the rise in  
10            nearly 90% of the wire centers. Staff's testimony is at odds with the clear  
11            requirements of the TRO and the reality of the Illinois marketplace.  
12

13       **Q.     Has the Staff also misinterpreted the TRO's direction with respect to**  
14             **whether carriers providing service over their own loops must be counted in a**  
15             **trigger analysis?**  
16

17       A.     Yes. Consider the following TRO passage and Staff's interpretation:  
18

<sup>28</sup>       Source: SBC Supplemental Response to AT&T Data Request 7 – 9.

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1 TRO: We recognize that when one or more of the three  
2 competitive providers is also self-deploying its own local  
3 loops, this evidence may bear less heavily on the ability to  
4 use a self-deployed switch as a means of accessing the  
5 incumbent's loops.<sup>29</sup>  
6

7 Interpretation: Thus, the FCC has specifically directed that CLECs be  
8 counted in the trigger analysis even if they provide their  
9 own loops.<sup>30</sup>  
10

11 As the above comparison notes, the Staff has taken FCC guidance indicating that  
12 carriers relying on their own loop may be given "less weight," and has read into it  
13 a "specific direction" that such carriers *must* be counted. Moreover, the Staff  
14 ignores further comment by the FCC in its discussion of how much weight should  
15 be given to a switch that does not rely on ILEC loops:  
16

17 Whether this competitor is using the incumbent's loops or its own  
18 loops should bear on how much weight to assign this factor, at  
19 least until such time as incumbent loops are no longer required to  
20 be unbundled.<sup>31</sup>  
21

22 There should be no question that the FCC grants the states the latitude to decide  
23 whether to count (i.e., how much weight to accord) a carrier that relies on its own  
24 loops. It is my recommendation that the Commission should *not* count such  
25 carriers because they fail to provide evidence as to the impairments that prevent a  
26 carrier from competing in the mass market using loops leased from the

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<sup>29</sup> TRO ¶ 501, n. 1560, emphasis added.

<sup>30</sup> Staff Exhibit 1.0, page 51, emphasis added.

<sup>31</sup> TRO ¶ 510, n. 1572.

**EXHIBIT 14**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY )  
REGULATORY COMMISSION'S )  
INVESTIGATION OF MATTERS RELATED TO )  
THE FEDERAL COMMUNICATIONS ) CAUSE NO. 42500  
COMMISSION'S REPORT AND ORDER ON. )  
REMAND AND FURTHER NOTICE OF )  
PROPOSED RULEMAKING IN CC DOCKET )  
NOS. 01-338, 96-98, AND 98-147. )

DIRECT TESTIMONY OF

JOSEPH GILLAN

ON BEHALF OF

AT&T COMMUNICATIONS OF INDIANA, GP

AND

TCG INDIANAPOLIS

APRIL 2, 2004

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Testimony of AT&T Witness Joseph Gillan  
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1 determine the *precise* loop-purchasing pattern of each CLEC trigger.<sup>61</sup> This  
2 discovery is attached herein as Exhibit JPG 2.2. Unfortunately, SBC Indiana has  
3 not yet completely respond to this discovery (although I understand counsel for  
4 AT&T is following up with SBC's counsel on this point), and instead has  
5 provided (what appears to be) the *total* UNE-L activity of all triggering CLECs  
6 combined (or perhaps even UNE-L loops provided to non-trigger CLECs).  
7 Because of the form of the response, I am unable to determine the loop-focus (i.e.,  
8 whether the carrier is primarily serving customers using DS-1 loops or analog  
9 loops) of each claimed switch trigger *individually*, and am able to only address the  
10 collective activity of all the companies combined. While I believe that this  
11 "collective analysis" is sufficient to demonstrate that mass market competition  
12 would be impaired without access to UNE-P, if SBC does provide a more  
13 complete discovery response, I reserve the right to supplement this testimony.

14  
15 A. SBC's Trigger Analysis Mocks the Federal Standard

16 Q. Does the SBC's "trigger analysis" produce results that are consistent with  
17 the TRO?

18 A. No, it does not. SBC's trigger claims violate the basic guidance provided by the  
19 FCC concerning the type and level of competitive activity necessary to reverse the  
20 FCC's finding of national impairment. As I noted earlier, a faithful application of  
21 the triggers should produce outcomes consistent with the FCC's own findings –

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<sup>61</sup> AT&T Data Request No. 23.

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1           that is, where a state commission observes facts that are comparable to data that  
2           the FCC used to find impairment, then those *same* state-level facts cannot be used  
3           in a "trigger analysis" that reverses the FCC's finding.

4  
5       **Q.    Have you summarized SBC's trigger analysis in a manner that demonstrates**  
6       **how trivial are the competitive levels it relies upon?**

7       **A.    Yes. Confidential Exhibit JPG 2.3 summarizes the competitive share, by wire**  
8       center and for the "market" as a whole, achieved by each of SBC's claimed  
9       trigger candidates.<sup>62</sup> As Exhibit JPG 2.3 demonstrates, the market activity cited  
10      by SBC (even if accepted in total) is insufficient to demonstrate non-impairment:  
11      the activity is *trivial* (barely 1% of the market), it is *declining* (as I discuss  
12      below), and it is far less *geographically dispersed* than the competition made  
13      possible by UNE-P. To eliminate mass market competition based on this  
14      evidence would be to reverse the FCC's finding based on evidence far less  
15      compelling than the FCC rejected in reaching its impairment finding to begin  
16      with.

17  
18      **Q.    Has the FCC repeatedly rejected trivial levels of market activity as proving**  
19      **non-impairment?**

20      **A.    Yes. For example, consider the following claims of low-level competitive**  
21      activity that all ended with the FCC national finding of impairment for mass  
22      market switching:

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1 ...the record indicates that competitive LECs have self-deployed  
2 few local circuit switches to serve the mass market. The BOCs  
3 claim that, as of year-end 2001, approximately three million  
4 residential lines were served via competitive LEC switches.  
5 Others argue that this figure is significantly inflated. Even  
6 accepting that figure, however, it represents only a small  
7 percentage of the residential voice market. It amounts to less than  
8 three percent of the 112 million residential voice lines served by  
9 reporting incumbent LECs.<sup>63</sup>

10 \*\*\*

11 We determine that, although the existence of intermodal switching  
12 is a factor to consider in establishing our unbundling requirements,  
13 current evidence of deployment does not presently warrant a  
14 finding of no impairment with regard to local circuit switching. In  
15 particular, we determine that the limited use of intermodal circuit  
16 switching alternatives for the mass market is insufficient for us to  
17 make a finding of no impairment in this market, especially since  
18 these intermodal alternatives are not generally available to new  
19 competitors.<sup>64</sup>

20 \*\*\*

21 The Commission's *Local Competition Report* shows that only  
22 about 2.6 million homes subscribe to cable telephony on a  
23 nationwide basis, even though there are approximately 103.4  
24 million households in the United States [2.6 percent]. Moreover,  
25 the record indicates that circuit-switched cable telephony is only  
26 available to about 9.6 percent of the total households in the nation  
27 ... it is difficult to predict at what point cable telephony will be  
28 deployed on a more widespread and ubiquitous basis.<sup>65</sup>

29 \*\*\*

30 Current estimates are that only 1.7% of U.S. households rely on  
31 other technologies to replace their traditional wireline voice  
32 service.<sup>66</sup>

33 <sup>62</sup> Source: SBC Exhibit WCD-7.

34 <sup>63</sup> TRO ¶ 438, footnotes omitted, emphasis added.

35 <sup>64</sup> TRO ¶ 443, footnotes omitted, emphasis added.

<sup>65</sup> TRO ¶ 444, footnotes omitted, emphasis added.

<sup>66</sup> TRO ¶ 443, n. 1356, emphasis added.



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We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching. In particular, only about three to five percent of CMRS subscribers use their service as a replacement for primary fixed voice wireline service, which indicates that wireless switches do not yet act broadly as an intermodal replacement for traditional wireline circuit switches.<sup>67</sup>

The ILECs have already tried to use low levels of competitive activity as marketplace evidence of non-impairment and the FCC's rejected those attempts with a national finding of impairment. Obviously, it would be inconsistent for the FCC to delegate to the states a trigger analysis that, when applied to data showing the same de minimus levels of competitive activity reviewed and rejected by the FCC, produced findings that reversed the FCC's national finding of impairment.

**Q. Have you also reviewed competitive activity in other areas of Indiana to scale the relative activity of UNE-L and UNE-P?**

**A. Yes.** To give scale, and to identify underlying market trends, I also reviewed UNE-L and UNE-P activity throughout Indiana, in each of its LATAs. This data is summarized in Table 1 below. A number of conclusions can be drawn from this data, which considers all UNE-L activity, including enterprise loop activity.

Table 1: UNE-L and UNE-P in Indiana<sup>68</sup>

LATA	Total Share	2003 Change	Growth
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<sup>67</sup> TRO ¶ 445, footnotes omitted, emphasis added.

<sup>68</sup> Source: SBC Response to AT&T data requests 2, 3 and 4.

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	UNE-L	UNE-P	UNE-L	UNE-P	UNE-L	UNE-P
CHICAGO	0%	23%	10	23,816	43%	114%
AUBN-HTGTN	4%	18%	60	2,919	5%	124%
BLOOMINGTN	2%	16%	(517)	13,760	-13%	165%
EVANSVILLE	5%	14%	(275)	8,739	-6%	155%
INDIANAPLS	4%	13%	(2,361)	79,967	-6%	175%
NEW ALBANY	0%	19%	22	9,081	20%	185%
SOUTH BEND	4%	18%	(718)	15,204	-11%	145%
Statewide	3%	15%	(3,779)	153,486	-7%	156%

As Table 1 demonstrates, even if all loops are counted, including enterprise loops, the competitive activity achieved by UNE-L is far smaller than that of UNE-P and is declining in most areas of the state.

**Q. Have you looked more specifically at the trends affecting analog (as compared to enterprise) loops?**

**A.** Yes. As I indicated earlier, discovery was served on SBC Indiana targeted at collecting UNE-L information for each claimed trigger candidate, separately identifying activity with respect to enterprise and analog loops (irrespective of the number of loops at any location). Although SBC Indiana did not answer the discovery for each trigger candidate individually, it did provide data on the overall UNE-L activity. This data is summarized in Table 2 below.

Table 2: UNE-L Trends<sup>69</sup>

Loop Type	In-service Quantity		Change	Wire Centers
	Jan. 2003	Dec. 2003		
Analog <sup>70</sup>	51,393	44,877	-13%	40

<sup>69</sup> Source: SBC Response to AT&T data request 23.

<sup>70</sup> Includes all analog loops, irrespective of the number at any particular location. Consequently, the in-service quantities is greater than the number of "mass market" loops

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Digital	23,328	53,352	129%	84
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13 Q. Is SBC's own "out of region" CLEC activity consistent with these trends?

14 A. Yes. The results from the analysis above should come as no surprise, for the same

15 barriers that produce the results summarized above have frustrated SBC's own

16 "out-of-region entry" as a CLEC. As the Commission is aware, SBC made

17 specific commitments to provide local telephone services in 30 markets as a

18 condition to its merger approval with Ameritech. According to New Paradigm

19 Resources Group, SBC Telecom installed 30 Class 5 local (Lucent 5ESS) circuit

20 switches in 30 cities across the nation. From these 30 markets/switches, however,

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because it is not subject to any DS0 cutoff.

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1 SBC provisioned a total of only 5,400 access lines in service in 2002 and 6,000  
2 access lines in service in 2003. Thus by 2003, SBC Telecom had an average of  
3 only 200 access lines in service on each of its required 30 switches. Little wonder,  
4 considering SBC Telecom's nationwide sales force included only 12 people.<sup>71</sup>

5 The UNE-L activity cited by SBC in this docket is clear and convincing  
6 evidence of the pervasive and systemic impairments that constrain UNE-L based  
7 mass market competition. SBC's own behavior (out of region) provides further  
8 evidence that these problems exist throughout the country, as a direct result of the  
9 inherited advantages of incumbency.<sup>72</sup> The self-provisioning switch triggers  
10 claimed by SBC *do not* challenge this assessment – indeed, to the contrary, they  
11 provide further evidence that these impairments are insurmountable. SBC's  
12 UNE-L trigger analysis should be rejected.

13

14 **B. Evaluating SBC's Individual Trigger Candidates**

15 **Q. Have you also evaluated the individual trigger candidates asserted by SBC to**  
16 **be self-provisioning switch triggers?**

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<sup>71</sup> 18<sup>th</sup> Edition CLEC Report 2004, New Paradigm Resources Group.

<sup>72</sup> It is not my purpose here to explain, in detail, exactly why UNE-L is a proven failure as a mass market entry strategy. In short form, the issue fundamentally involves access to the legacy loop network of the incumbent. This resource (which cannot be duplicated) must be accessed in order to compete with the incumbent. The fundamental role of local switching is that it provides a ubiquitous, electronic access point to the loop network – that is, by leasing capacity where the loop terminates, customers can be migrated to competitors electronically, and the substantial costs to “extend” the analog loop plant to a CLEC switch that is not integrated into the loop network (as the ILEC's switches are) can be avoided. Because local switching provides wide-spread electronically controlled access to the monopoly loop network of the incumbent, it can succeed where the manually-configured, limited-access UNE-L strategy fails.

**EXHIBIT 15**

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of: )

REVIEW OF FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING REQUIREMENTS )  
FOR INDIVIDUAL NETWORK ELEMENTS )

CASE NO.  
2003-00379

Filed: March 31, 2004

**REBUTTAL TESTIMONY AND EXHIBITS OF  
JOSEPH GILLAN  
ON BEHALF OF COMPSOUTH  
\*\* PUBLIC VERSION\*\***

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Network Telephone .....	32
Xspedius .....	34
SBC Telecom .....	37

**I. Introduction**

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**Q. Please state your name and the party you are representing.**

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**A. My name is Joseph Gillan. I filed direct testimony on behalf of CompSouth in  
this proceeding.**

6

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**Q. What is the purpose of your rebuttal testimony?**

9

10

**A. The principal purpose of my rebuttal testimony is to address the claim by**

11

**BellSouth that there is sufficient mass market local competition by switch-based**

Case No. 2003-00379  
Rebuttal Testimony of Joseph Gillan  
On behalf of CompSouth

1 demonstrates the fundamental fact that switch-based CLECs are focused on the  
2 enterprise market, with analog loop activity both trivial and declining.

Table 4: UNE-L Activity in Kentucky

Loop Type	In Service UNE-L (VGEs)		Percent Change
	May 2002	Nov. 2003	
Analog Loops	2,426	1,161	-52%
Digital Loops	23,208	44,376	91%

3  
4 As Table 4 demonstrates, BellSouth's claim that there are three self-provisioning  
5 mass market switch triggers in Kentucky is absurd. The total analog loop activity  
6 in the two markets where BellSouth claims the switch triggers are satisfied has  
7 fallen by 50% in the past 18 months and is barely 1,000 lines. Moreover,  
8 BellSouth's data did not indicate that it was leasing *any* analog loops to AT&T,  
9 Network Telephone or SBC. Although there were a small number of loops that  
10 BellSouth could not attribute to a particular carrier (less than 200), even if all this  
11 "unattributed" activity were assigned to each of the claimed trigger candidates,  
12 none could plausibly be considered evidence of mass market competition.  
13 Perhaps this data explains why BellSouth is no longer providing Ms. Tipton's  
14 workpaper summary in response to discovery – to do so would starkly reveal the  
15 fact that its claims have no merit.  
16

**EXHIBIT 16**



**Docket 2003-326-C**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of CompSouth**

**BEFORE THE**  
**SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**IN RE:**

Analysis of Continued Availability of Unbundled  
Local Switching for Mass Market Customers Pursuant  
to the Federal Communications Commission's  
Triennial Review Order

**DOCKET 2003-326-C**

**Filed: March 12, 2004**

**REBUTTAL TESTIMONY AND EXHIBITS OF**  
**JOSEPH GILLAN**  
**ON BEHALF OF COMPSOUTH**  
**\*\*PUBLIC VERSION\*\***

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NuVox.....	32
Xspedius .....	34

**I. Introduction**

**Q. Please state your name and the party you are representing.**

**A. My name is Joseph Gillan. I filed direct testimony on behalf of CompSouth in this proceeding.**

**Q. What is the purpose of your rebuttal testimony?**